

REMARKS

This Application has been carefully reviewed in light of the final Office Action mailed November 7, 2005. Claims 1-5, 11-17, and 20-22 are pending in the application. In the final Office Action, Claims 1-5, 11-17, and 20-22 were rejected. For the reasons discussed below, Applicant respectfully requests reconsideration and favorable action in this case.

First Section 103 Rejection

The Examiner rejects Claims 1-5, 11, 14-15 and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,032,197 issued to Birdwell et al. ("*Birdwell*") in view of U.S. Patent No. 6,088,759 issued to Hasbun et al. ("*Hasbun*").

In order to establish a *prima facie* case of obviousness, three requirements must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge available to one skilled in the art, to modify a reference or combine multiple references; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all of the claim limitations. M.P.E.P. § 2143. In the present case, a *prima facie* case of obviousness cannot be maintained at least because *Birdwell* and *Hasbun*, whether considered singly, in combination with one another, or in combination with information generally available to those of ordinary skill in the art at the time of the invention, fail to disclose all of the elements of the pending claims. Furthermore, there is also not a suggestion or motivation to combine these references as proposed by the Examiner.

Claim 1 of the present application recites the following limitations:

A stateless protocol method which is operable on a computer processor and computer memory, the stateless protocol comprising a computer program which configures the computer processor to:

establish a legacy protocol, wherein said legacy protocol defines at least one legacy parameter for a header portion of a message, and wherein said legacy protocol defines a fixed legacy header length;

receive an inbound message having a header portion;

allocate a memory portion from the computer memory, said memory portion having a depth corresponding to said fixed legacy header length;

push said header portion of said inbound message onto said memory portion thereby forming a received header, wherein said header portion is truncated to form the received header if a length of said header portion is greater than said depth of said memory portion corresponding to said fixed legacy header length, such truncation causing any header parameters associated with an upgraded protocol to be removed from said header portion; and

interpret said received header according to said legacy protocol.

Independent Claims 11, 15 and 20 recite similar, although not identical, limitations.

Applicant respectfully submits that Claim 1 is allowable since the proposed *Birdwell-Hasbun* combination does not disclose, teach, or suggest each and every one of these limitations. For example, the proposed combination does not disclose, teach or suggest “allocat[ing] a memory portion from the computer memory, said memory portion having a depth corresponding to said fixed legacy header length.” The Examiner states in the Office Action that this limitation is disclosed at Column 3, lines 3-22 and Column 6, lines 10-21 of *Birdwell*. However, there is no disclosure in these cited passages of a particular depth of the memory, much less that the depth *corresponds to a fixed legacy header length*.

Furthermore, the proposed combination does not disclose, teach, or suggest “push[ing] said header portion of said inbound message onto said memory portion thereby forming a received header, wherein said header portion is truncated to form the received header if a length of said header portion is greater than said depth of said memory portion corresponding to said fixed legacy header length, such truncation causing any header parameters associated with an upgraded protocol to be removed from said header portion.” First, Applicant respectfully disagrees with the Examiner’s statement that the recited upgraded protocol could be interpreted as the legacy protocol. As is clear from this claim (i.e., the use of the two different terms), from its dependent claims (especially Claim 2), and the specification of this application, the legacy protocol is different than the upgraded protocol. Second, although the cited passages in *Birdwell* disclose compressing a header by removing particular “non-changing” header fields, this is not a disclosure of truncating portions of a header that do not fit with a memory portion. The passages cited from *Birdwell* describe communication of packets in a single protocol – UDP/IP. Although packets

communicated using this protocol have differing headers (see, e.g., Column 2, lines 33-47), they use the same protocol. There is no disclosure of header parameters associated with an upgraded protocol, and thus there is no disclosure of the limitations of this claim.

The Examiner goes on to argue that Claim 1 may be interpreted as if the condition “if a length of said header portion is greater than said depth of said memory portion” is not true, which Applicant gathers is why the Examiner states that Birdwell discloses this limitation. However, Claim 1 clearly requires a computer program which configures a computer to perform the step of truncating the header portion if this condition is true. This capability is clearly a requirement of the claim and cannot be read out of the claim.

Although arguing this construction of Claim 1, the Examiner also asserts that the above-quoted “pushing” limitation is disclosed in *Hasbun* (at least when the above condition is “true”). However, Applicant is unclear as to how the cited figures of *Hasbun* disclose allocating a memory depth corresponding to a fixed legacy header length, as asserted by the Examiner, or how these figures discloses or suggest truncating the header portion as claimed. As the Examiner recognizes, *Hasbun* does not disclose truncating a header portion, instead it discloses generating an error if there is insufficient space in a memory for an object. Furthermore, it discloses that if such an error is generated, the memory is not allocated (Column 9, lines 35-40). Thus, it actually teaches away from modifying (for example, truncating) what it trying to be put in memory. For this reason, this teaching of *Hasbun* cannot be properly combined with *Birdwell* to disclose “push[ing] said header portion of said inbound message onto said memory portion thereby forming a received header, wherein said header portion is truncated to form the received header if a length of said header portion is greater than said depth of said memory portion corresponding to said fixed legacy header length, such truncation causing any header parameters associated with an upgraded protocol to be removed from said header portion.” Furthermore, as described above, even if these teachings could be combined, *Birdwell* also does not disclose truncating a header portion, and thus this limitation is not disclosed, taught or suggested by the proposed combination of references.

For at least these reasons, Applicant believes Claim 1 to be in condition for allowance. Furthermore, Claims 11, 15 and 20 include similar limitations and thus are allowable for similar reasons. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 1, 11, 15 and 20, as well as the claims that depend from these independent claims.

Second Section 103 Rejection

The Examiner also rejects Claims 2, 12-13, 16 and 21-22 under 35 U.S.C. § 103(a) as being unpatentable over *Birdwell* in view of *Hasbun* in view of Deering, IETF RFC-2460 by S. Deering and R. Hinden ("*Deering*") and in further view of U.S. Patent No. 6,944,168 issued to Paatela et al. ("*Paatela*").

In addition to depending from an allowable independent claim, Claims 2, 12, 16 and 21 recite additional limitations not disclosed by any of the cited references. For example, *Birdwell* does not disclose an upgraded protocol or that the upgraded protocol includes at least one legacy parameter of a legacy protocol and at least one upgraded header parameter. Again, there are not two different protocols disclosed in *Birdwell*. *Birdwell* discloses compressing the headers of some packets that are communicated using a single protocol (the headers of some packets can be compressed because of repetitive information in the header of each packet). Furthermore, since there is not a disclosure of both a legacy protocol and an upgraded protocol, there is also not a disclosure of any upgraded header parameters or of a memory portion having a depth corresponding to said upgraded header length. The fact that *Birdwell* does not disclose two different protocols is evident by the fact that the Examiner uses the very same passage of *Birdwell* for a disclosure that the memory portion has a depth corresponding to a fixed *legacy* header length and for a disclosure that the memory portion has a depth corresponding to an *upgraded* header length. Again, it is improper to construe a "fixed legacy header length" as being the same thing as an "upgraded header length."

Furthermore, none of the cited references disclose that 1) the received header of an inbound message is interpreted according to an upgraded protocol if at least one upgraded header parameter is pushed on the memory portion, and that 2) the received header of the

inbound message is interpreted according to a legacy protocol when no upgraded header parameters are pushed on the memory portion. As described above, *Birdwell* does not disclose both a legacy protocol and an upgraded protocol, and thus it also cannot disclose these limitations. Furthermore, the Examiner argues that another reference (*Paatela*) discloses interpreting an inbound message according to an upgraded protocol if at least one upgraded header parameter is pushed on the memory portion. However, as with *Birdwell*, *Paatela* does not disclose interpreting an inbound message according to one of two different protocols based on the type of header parameter that is pushed on a memory portion. Applicant respectfully submits that there is no suggestion to modify the teachings of *Birdwell* and *Paatela*, which teach interpreting messages according to a single protocol, to create a teaching of a single system, software or method that can interpret an inbound message according to two different protocols and where the decision regarding which protocol to use is based on the type of header parameters is received. No such disclosure or teaching is found in any of the cited reference and there is no suggestion to modify the teachings of the cited references to disclose such a system, software or method.

Applicant respectfully submits that the Examiner is improperly using hindsight to splice together teachings of numerous references to teach the present invention when there is no suggestion or motivation in the cited prior art to do so. The M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. ch. 2142 (Rev. 2, May 2004). The governing Federal Circuit cases are equally clear.

A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

In re Kotzab, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted).

For at least these additional reasons, Applicant believes Claims 2, 12, 16 and 21 to be in condition for allowance. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 2, 12, 16 and 21. Furthermore, Claims 13 and 22 depend from Claims 12 and 21, respectively, and are allowable at least due to their dependence on an allowable claim.

Third and Fourth Section 103 Rejections

The Examiner rejects Claims 3 and 17 under 35 U.S.C. § 103(a) as being obvious over *Birdwell* in view of *Hasbun* in view of *Deering* and in further view of *Paatela* and U.S. Patent No. 5,206,822 issued to Taylor ("*Taylor*"). The Examiner also rejects Claim 4 under 35 U.S.C. § 103(a) as being obvious over *Birdwell* in view of *Hasbun* and in further view of U.S. Patent No. 4,973,952 issued to Malec et al. ("*Malec*").

Each of these claims depends from one of independent Claims 1 or 15. As discussed above, Applicant believes these independent claims to be in condition for allowance. Therefore, Claims 3, 4 and 17 are allowable at least because they depend from an allowable independent claim. Therefore, Applicant respectfully requests reconsideration and allowance of Claims 3, 4 and 17.

CONCLUSION

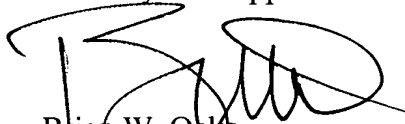
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all the pending claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicant hereby requests a telephone conference with the Examiner and further request that the Examiner contact the undersigned attorney to schedule the telephone conference.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Brian W. Oaks
Reg. No. 44,981

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Correspondence Address:

Customer Number: 05073